

# ARIZONA

## REAL ESTATE BULLETIN

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*On-line Edition*  
[www.re.state.az.us](http://www.re.state.az.us)

## Arizona laws affect sales of property in Mexico

The Department often receives questions about the sale of real estate in Mexico. John Gerard, Deputy Director of our Subdivisions Division, says licensees must be careful to observe Arizona real estate statutes when involved in such transactions. According to John, these are the most frequently asked questions:

**Q:** Is an Arizona real estate license required to sell for another and for compensation real estate in Arizona which is located in Mexico?

**A:** Yes a real estate license is required. It is unlawful for any person, corporation, partnership or limited liability company to engage in real estate activity in Arizona (no matter where the property is located) as a broker or salesperson without first obtaining a license.

**Q:** Are there any exceptions?

**A:** Yes, there are some exceptions. A natural person, a corporation through its officers, a partnership through its partners or a limited liability company through its members or managers that deal in selling, exchanging, purchasing, renting, leasing, managing or pledging the person's or entity's own property, and does not receive special compensation for a sales transaction or does not receive special compensation or other consideration including property management fees or consulting fees, may be exempt from the licensing requirement.

For example, a corporate subdivider of a residential subdivision located in Mexico could offer its property to Arizona residents through its officers without the need of a real estate license, if its corporate officers did not receive

special compensation or other consideration including a consulting fee.

The corporate subdivider may also choose to simply list its property located in Mexico with an Arizona broker.

**Q:** Why does Arizona law apply to property located in Mexico?

**A:** Arizona Subdivision Law applies to all subdivision sales offerings directed at Arizona residents, regardless of where the land is located.

**Q:** Is a public report required to advertise a subdivision located in Mexico in Arizona?

**A:** Yes, a public report is required. Before offering subdivided lands for sale or lease, a subdivider must notify the commissioner in writing via an application for public report on a form provided by the department. If the application is in compliance with Arizona law, the subdivider is issued a public report. Arizona law defines a subdivision as improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into six or more lots, parcels or fractional interests.

**Q:** Is there any way that advertising may begin in Arizona before a public report is issued?

**A:** Yes, there are two programs designed to allow a subdivider to market property to Arizona residents prior to the department issuing a public report. One is our lot reservation program, which allows a subdivider to take a deposit up to \$5,000.00 for the reservation of a specific lot. Under this program, no

## State says ADRE can't accept credit cards

Legislation enacted in 2000 by the Arizona Legislature permits state agencies to accept credit cards for the payment of licensing and renewal fees.

The Department of Real Estate was one of the first agencies to submit an application to the General Accounting Office of the Arizona Department of Administration seeking authorization to accept credit cards.

Unfortunately, the General Accounting Office disapproved our application at this time because of budgetary constraints. The Department hopes to re-apply at some future time when the economic environment improves.

purchase price or contract is negotiated. The reservation simply allows a purchaser to reserve a lot until a public report is issued at which time the buyer and seller can enter into a purchase contract.

The second available program is the conditional sales program. Although similar to a lot reservation, it differs in that it allows the subdivider to negotiate a purchase price and execute a purchase

*Continued on page 8*

### Do you know?

You can visit the Department's web site at [www.re.state.az.us](http://www.re.state.az.us) to check your license expiration date, download ADRE forms, learn which schools offer online continuing education, and much more.

# Stigmatized property: What must be disclosed?

by Dan Kloberdanz

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The law is very clear that a real estate broker has an obligation to disclose to a buyer any known physical defects to the property, such as the existence of termite infestation or damage to a roof. Likewise, the broker is clearly required to disclose any known legal impairments to the title the property, including the existence of a lien or any "clouds" on the title. On the other hand, real estate brokers are often faced with difficult choices in determining whether to disclose certain intangible problems associated with the property, also known as "stigmas." As explained below, Arizona does now have a stigmatized property law which does address many of these issues, and although the statute is controlling on all matters addressed in the statute, there are still some grey areas.

**Arizona's Stigmatized Property Law**  
In 1995, the Arizona Legislature enacted A.R.S. § 32-2156, Arizona's first stigmatized property law. This law provides that sellers, landlords and real estate licensees have no duty to disclose to buyers or tenants that (1) a person has died on the property (whether by natural death, suicide or homicide); (2) a felony has been committed on the property; (3) the property is or has been owned or occupied by a person who has AIDS or is HIV-positive, or has "any other disease that is not known to be transmitted through common occupancy of real estate"; and (4) the property is located in the vicinity of a sex offender (added in 1997).

The statute does not prohibit a seller or broker from disclosing such facts, rather the statute provides that if such facts are not disclosed by a seller or a broker, then no criminal, civil or administrative action may be brought against such person. The statute protects those persons from "failing to disclose" such facts, and apparently the statute does not necessarily protect a seller or real estate broker from making an affirmative misrepresentation concerning crimes or deaths on the property.

Originally, the legislature inadvertently placed language in the statute

which limited this protection to only those brokers acting on behalf of the seller or landlord, which arguably excluded buyer's brokers and possibly dual agents. The law was amended in 1996 to include equal protection for buyer's agents.

In 1997, the Arizona Legislature amended the stigmatized property statute to include whether the property is located in the vicinity of a sex offender. Somewhat surprisingly, this seemingly controversial change in the law went practically unnoticed. Therefore, since 1997, a broker would not be legally required to disclose the fact, even if known to the broker, that the subject property is located next to a property occupied by a sex offender.

**Stigmas not covered by the statute**  
Whether a real estate broker must disclose information to a buyer relating to facts that may psychologically impact a property has been an issue of much debate in Arizona. As explained above, the Arizona Legislature enacted a law in 1995 which resolves the disclosure requirements for many of the stigma issues. But the statute does not address all possible stigmas.

The first reported court case to address the stigma issue occurred in the case of *Reed v. King*, 145 Cal.App.3d 261, 193 Cal.Rptr. 130 (Cal. App. 1983) where the California Court of Appeals held that a buyer of a home may recover damages for the non-disclosure of the fact that there had been a multiple murder in the house 10 years earlier. The Reed court held that if the buyer could prove that the murders had a "significant and measurable effect on the market value," and that the seller and his agent were aware of this effect, the seller and the agent had a duty to disclose even though the character of the information affecting the market value of the house was merely psychological.

In response to the Reed v. King case, in 1987 California became the first state to enact legislation concerning stigmatized property. Following the lead of California, many other states including Arizona have since enacted similar legislation.

Although it is now clear under Arizona law that the murders in the Reed case would not have to be disclosed, the analysis of the murder case could apply to other types of stigmas. The Arizona

Department of Real Estate Commissioner's Rules require a broker to disclose to a potential buyer in writing any information which the broker possesses which "materially and adversely" affects the consideration the buyer would pay. Similarly, the common law developed by the courts essentially requires the broker to disclose to the buyer all material facts about the property known to the broker. The items required to be disclosed may include "material facts" which are purely subjective and do not affect any physical condition of the property such as "stigmas" associated with the property. Those items which are not specifically protected by the stigmatized property statute may still be required to be disclosed.

A summary of the current disclosure requirements

## 1. Death on the Property.

The occurrence of a recent death on a property, such as a murder or suicide, may create a significant "stigma" against the property. Regardless, under Arizona's stigmatized property statute, a seller, landlord or broker is not required to make any such disclosure, even if such fact is known. Once again, the law does not require the broker to remain silent, and a broker representing a buyer would certainly be free to make a full disclosure to the broker's client as to all stigmas, except that an occupant has AIDS.

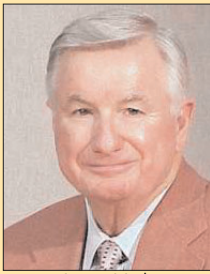
## 2. Previous Occupant with HIV or AIDS

Even before the enactment of Arizona's stigmatized property law, a broker's disclosure that a previous occupant of a property was HIV positive or had AIDS would violate the Federal Fair Housing Act, which has protected "handicapped persons" since 1989. Even though there is still a portion of the public which has fears about purchasing property previously occupied by a person infected with AIDS (which may arguably decrease the value of the home), under Arizona's stigmatized property law the broker is fully protected by not making any such disclosure.

## 3. Crime in the Area

The stigmatized property law protects the broker only from failing to disclose

*Continued on page 7*



Jerry Holt

## News From The Commissioner

### Substantive Policy Statement No. 2

On Friday, May 25th, I met with Tom Fannin and Alice Martin of the Arizona Association of Realtors®, and with Michelle Lind, Legal Counsel for AAR®, to see if they and the Department could come to an agreement on the wording of Substantive Policy Statement (SPS) No. 2, "Agency Responsibility to Verify Information." Also at the meeting was Assistant Attorney General Mike Denious who advises the Department on legal matters.

I am happy to report that we finalized a draft for a revision of the Statement. The text of the old and new versions may be found on page 7.

This revision has been a long time coming. I believe both sides of the issue are now "somewhat" satisfied. The new document still provides that licensed agents have a fiduciary duty which includes an obligation to exercise reasonable care in obtaining and communicating information that is material to the client's interest and relevant to the contemplated transaction. This includes making a reasonable effort to verify information emanating from third parties such as the seller or buyer and not simply saying, "Ahhh, let's just take their word for it." However, an agent does not have an obligation to have expertise in other professional or technical disciplines.

Reasonable care may include recommending that a client seek professional or technical advice when the matter is beyond the expertise of the licensee.

This Statement is not intended to

impose duties or obligations beyond those required by real estate statutes, the Commissioner's Rules or common law.

An example of fulfilling your fiduciary duty to your client under the guidelines contained in the new version of SPS No. 2 would be recommending that your client hire a roofing contractor or home inspector to inspect the roof of the house your client proposes to buy when your expertise does not include evaluating the condition of a roof.

SPS No. 2 has been revised to clarify previous versions dated January 1994 and June 1999. I am told by industry leaders that SPS No. 2 has been used in litigation to imply that real estate licensees must personally conduct discovery or verify information. Not so. Discovery and verification may be conducted through the use of qualified third parties. That has always been the case. Correction and clarification of any such misunderstanding of SPS No. 2 is overdue.

It is my sincere hope that this new version will serve to eliminate any misuse of SPS No. 2.

So let it be written, so let it be done.

### Results of our Licensee Survey

Results from the 2000 Licensee Survey mailed to all licensees in December are in, and I am pleased that the Department scored high grades in virtually all areas.

Asked if you can contact the right person or division without difficulty, 29 percent of respondents said they "always do" while 65 percent feel they

"usually do."

Eighty-eight percent of those responding said they feel the Department's regulation of the real estate industry is "fair and appropriate."

Asked how respondents thought Department staff members treated them, more than 90 percent responded that treatment was "average" to "excellent."

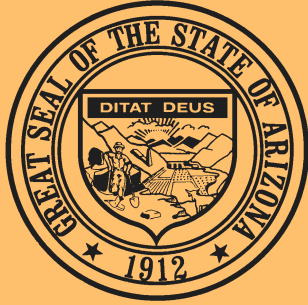
On the subject of prelicensure and continuing education, 77 percent of respondents feel their prelicensure courses were "above average," and 73 percent feel continuing education courses are "above average."

Asked to evaluate the Department's publications, the web site and the potential for online application processing, 72 percent of respondents rated the content and the appearance of the Arizona Real Estate Bulletin as "above average."

Surprisingly, only 46 percent of respondents said they had visited the Department's web site, but this is up from 26 percent in 1998. Of those who have visited the site, 74 percent rated it as "good" to "excellent."

As always, we are looking for ways to improve the way in which the Department serves licensees and the public.

Should you have any recommendations or criticisms, please send email to Cindy Ferrin, Director of our Customer Services Division. Her address is [cferrin@re.state.az.us](mailto:cferrin@re.state.az.us). You may telephone her at (602) 468-1414 X100, or write to Customer Services Division, ADRE, 2910 N. 44th Street, Phoenix AZ 85018.



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### A brief history of the *Arizona Real Estate Bulletin*

The *Arizona Real Estate Bulletin* was first published in September 1968 when J. Fred Talley was Commissioner. The purpose of the publication was "to bring you information, food for thought, observations and other items that will be of assistance to you in your profession." Early issues were filled with quaint homilies such as this one:

Tips that can aid you in selling

- Don't say "down payment." Say "initial investment."
- Don't ask for "a listing." Ask for "authorization to sell,"
- Don't say "second mortgage." Say "perhaps we can find additional financing."
- Don't say "sign here." Say "write your name as you want it to appear on your deed."

And there were pithy sayings: "The best way to get ahead is to have one." "Error will slip through a crack while truth will stick in a doorway."

Disciplinary actions were one-line summaries, and page after page was devoted to listing the names and home addresses of new licensees.

There was some meat in the publication, though. New statutes were reviewed; the Department's policies were promulgated, and there were some good informational articles.

In 1970 legislation was enacted (and later repealed) requiring the Department to "print an annual directory of licensees and to publish a quarterly bulletin, the *Arizona Real Estate Bulletin*."

Publication was a hit-and-miss proposition during many years. Some issues are not dated, others show only the year in which they were published. The Department has what we *believe* to be a copy of every issue published, but because many issues were not dated, this is difficult to verify.

Publication of the *Bulletin* in its current format began in 1991 when Jerry Holt became Commissioner. At that time it was mailed at no cost to all active and inactive licensees four times a year. When the Legislature would no longer appropriate funds to do this (at a cost of about \$50,000 a year), the Department began publication six times a year on the Internet and by mail through a paid subscription which costs \$10 a year.

Currently, funds are available to mail one copy to all active and inactive licensees once a year. Again this year the Legislature declined to fund quarterly mailings to all active and inactive licensees. Several respondents to our December 2000 Customer Survey suggested a slight increase in license fees to offset the cost of printing and mailing the *Bulletin*. Unfortunately, that won't work. We can't increase license fees unless those fees fall below 95 percent of our budget appropriation, and if we did increase the fees, the money would go into the state's general fund. The Department would never see it.

Your suggestions for improving the *Arizona Real Estate Bulletin* are always welcome. Address them to Charles Downs, ADRE, 2910 N. 44th Street, Phoenix AZ 85018.

One of those many "pithy sayings," in the Summer 1973 issue, bears repeating: "We should be thankful for the deals that don't go through, as they are what keep us going in between the deals that do go through."

**The mission of the  
Arizona Department of Real Estate  
is to safeguard and promote the public interest  
through timely and capable assistance,  
fair and balanced regulation,  
and sound and effective education.**



## ADMINISTRATIVE ACTIONS

### APPLICATIONS DENIED

00A-139

Natalie R. Ortiz  
Surprise

DATE OF ORDER: May 23, 2001

**FINDINGS OF FACT:** In her November 24, 2000 application for a real estate salesperson's license, Petitioner disclosed a September 1999 conviction to one count of False Statement, a class 1 misdemeanor, in Maricopa County Superior Court.

In April 1998, Petitioner began receiving unemployment benefits from the State of Arizona. On August 6, 1998, Petitioner began working for Renaissance Personnel Group, Inc., as a temporary employee. Renaissance assigned Petitioner to work at Tower Realty Corporation. On October 28, 1998, Tower hired Petitioner as a permanent employee.

Although she had obtained gainful employment on August 6, 1998, she continued for eight weeks to renew her claim for unemployment benefits and continued to receive the benefits. In doing so, she made false statements to the Department of Economic Security (DES) regarding her employment status and received \$1,419 in unemployment benefits to which she was not entitled.

When confronted with the facts by DES, she admitted what she had done and on the same day repaid the \$1,419 she had improperly received.

She was charged by the State with having committed eight violations of A.R.S. § 23-785 (false statement) and one violation of A.R.S. § 13-2311 (fraudulent schemes and artifices), and one violation of A.R.S. §§ 13-1802(A)(3) and 13-1801 (theft). She entered a plea agreement and was convicted of one of the false statement charges. She was ordered to pay a \$320 fine.

**VIOLATIONS:** Petitioner engaged in conduct that violates A.R.S. §§ 32-2153(B)(2), (B)(3), (B)(5) and (B)(10). The Administrative Law Judge acknowledged the existence of mitigating circumstances including the fact that her conviction was Petitioner's only adverse contact with the law, that she made restitution and has remained gainfully employed since the incident in questions, and that she seemed genuinely remorseful for her actions. He wrote, "However, those mitigating circumstances are counterbalanced by the recency of Ms. Ortiz's criminal conviction, the serious nature of Ms. Ortiz's misconduct, and the Administrative Law Judge's conclusion that Ms. Ortiz's explanation of the events in question was not completely accurate."

**DISPOSITION:** Petitioner's application for a real estate salesperson's license is denied.

00A-128

Paulo M. Pena  
Phoenix

DATE OF ORDER: May 29, 2001

**FINDINGS OF FACT:** In his October 2000 application for a real estate salesperson's license, Petitioner disclosed a 1991 conviction for DUI,

a 1998 conviction for possession of drug paraphernalia and a 1998 conviction for DUI.

Petitioner did not present any character witnesses on his behalf. His testimony was general in nature. He did not present any detailed information as to what he has been doing since the convictions and did not present specific information to demonstrate that he is of good character sufficient to hold a real estate salesperson's license.

**VIOLATIONS:** Petitioner failed to show by a preponderance of the evidence that he is a person of good character within the meaning of A.R.S. § 32-2153(B)(7).

**DISPOSITION:** Application for a real estate salesperson's license denied.

### CONSENT ORDERS

00A-144

Karen Anderson Rose  
Yuma

DATE OF ORDER: April 17, 2001

**FINDINGS OF FACT:** In her July 16, 1999 application for a real estate salesperson's license, Respondent failed to disclose a June 9, 1999 conviction in Beaufort, S.C. Municipal Court for breach of trust, a misdemeanor. She was sentenced to one day in jail and fined \$845.

**VIOLATIONS:** Respondent's failure to disclose the conviction constitutes procuring or attempting to procure a license by filing a license application that was false or misleading within the meaning of A.R.S. § 32-2153(B)(1). She is guilty of fraud or dishonest dealings as described in A.R.S. § 32-2153(B)(5). Her conduct does not show that she is a person of honesty, truthfulness or good character within the meaning of A.R.S. § 32-2153(B)(7).

**DISPOSITION:** Respondent's real estate salesperson's license is suspended for 21 days upon entry of this Order. Respondent to pay a civil penalty in the amount of \$500 and attend six hours of continuing education classes in the categories of Commissioner's Standards (including fiduciary duties) and Real Estate Legal Issues.

Prior to the conclusion of the suspension and prior to activating her license, Respondent shall post a surety bond pursuant to A.R.S. § 32-2193.02 in the amount of \$5,000. Respondent shall not be a signatory on, or have access to, any trust accounts or other accounts which contain client funds.

Each designated broker who wishes to employ Respondent at any time during the next two years of active licensure shall file with the Department's Compliance Officer a signed statement certifying that the broker has received and read a copy of this Order and agrees to act as Respondent's practice monitor.

The practice monitor shall submit quarterly written reports to the Compliance Officer which attest to Respondent's workload as well as the quality of her services and client relationships. The practice monitor shall be responsible for reporting any behavior or conduct of the Respondent which violates real estate statutes or rules.

00A-135

Thomas M. Scallon  
Phoenix

DATE OF ORDER: April 20, 2001

**FINDINGS OF FACT:**

In January 1985, Respondent was convicted of criminal simulation, a class 1 misdemeanor and placed on three years' supervised probation. In March 1985, Respondent's probation was revoked for possession of marijuana. In June 1985, Respondent's probation was reinstated.

In May 1989, Respondent was convicted of DUI. In January 1998, Respondent was convicted of DUI. In November 1998, Respondent was convicted of possession of marijuana, a class 6 felony. He was incarcerated in the Maricopa County Jail for one month, fined \$1,600 and placed on three years' supervised probation. In May 2000, the Court discharged Respondent from probation and designated the offense a misdemeanor.

**VIOLATIONS:** Respondent has violated the terms of a criminal probation order, in violation of A.R.S. § 32-2153(B)(9).

**DISPOSITION:** Respondent shall be issued a two-year provisional real estate salesperson's license under the following terms and conditions:

- Respondent shall abstain completely from the use of any illegal drugs or controlled substances unless taken pursuant to a valid prescription and orders of a medical doctor;
- Respondent shall submit to body fluid tests, randomly drawn, not to exceed two per month at the request of the Department's Compliance Officer.
- Within 10 days of employing Respondent, each employing broker shall file with the Compliance Officer a signed statement certifying that the broker has received a copy of this Consent Order and agrees to act as Respondent's practice monitor. The practice monitor shall submit bimonthly written reports to the Compliance Officer which attest to Respondent's workload, as well as the quality of his services and client relationships. The practice monitor shall be responsible for reporting any behavior or conduct which violates real estate statutes or rules.

98A-H1992

Mark Capley and Nirvana Properties, L.L.C.  
Tucson

DATE OF ORDER: April 23, 2001

**FINDINGS OF FACT:** Respondent has, through Nirvana Properties, offered to sell or sold parcels in illegal subdivisions known as Escalante Lots and Spanish Ridge in Pima County. Respondent's conduct facilitated the subdivision of the 59-acre Escalante Lots parcel into lots from 3.34 acres to 10 acres in area, and the 80-acre Spanish Ridge parcel into lots from 3.34 to 20 acres in area. Escalante Lots now consists of 12 lots, and Spanish Ridge consists of 13 lots.

**VIOLATIONS:** Respondents shall be prohibited

*Continued on page 6*

*Continued from page 5*

from selling or conveying lots, or any fractional interests thereof, located in Spanish Ridge or Escalante Lots, until Respondents demonstrate compliance in full with this Consent Order and obtain a written statement of the Department's Compliance Officer confirming such compliance and a written order by the Commissioner allowing such sale or conveyance.

Respondents are jointly and severally assessed a civil penalty in the amount of \$1,000.

Respondents shall within 30 days of this Order offer rescission to each and all purchasers of a lot or lots from Respondents in a form substantially identical in content to the example attached. Purchasers shall have 30 days after receipt of the rescission offer, and a copy of this Consent Order, to accept or reject the offer.

Respondents are financially responsible for bringing Escalante Lots and Spanish Ridge into compliance with Pima County subdivision standards.

Respondents shall within 30 days of this Consent Order obtain and submit to the Department's Compliance Officer a written statement by the Pima County Planning and Zoning Director that Escalante Lots and Spanish Ridge are in compliance with all applicable county subdivision statutes, regulations and ordinances, or plat waiver requirements as applicable. Extensions of this deadline may be granted upon good cause and the written consent of the Pima County Planning and Zoning Director.

Respondents shall within 30 days of this Consent Order obtain an authorized written statement by the Arizona Department of Water Resources that contains a finding that Respondents have demonstrated that the physical, continuous and legal availability requirements for a certificate of assured water supply pursuant to A.R.S. § 45-576 and applicable Arizona Administrative Code provisions, would have been met had a timely application for a certificate of assured water supply been submitted for Escalante Lots and Spanish Ridge and satisfies the requirement of a certificate of assured water supply. In the alternative, Respondents shall within 90 days of this Consent Order obtain a certificate of assured water supply from the Arizona Department of Water Resources, in accordance with the requirements of A.R.S. § 45-576, with respect to all lots located within Escalante Lots and Spanish Ridge.

Future sales or conveyances by Respondents of any lot or lots (or interest therein) within Escalante Lots and Spanish Ridge shall be subject to the public report requirements of A.R.S. § 32-2181 *et seq.* Specifically, should Respondents in the future sell or offer for sale any lot, lots or interests, Respondents shall apply for and obtain a public report and otherwise comply with the provisions of A.R.S. §§ 32-2181 *et seq.* before making such offers or sales.

In the event Respondents obtain ownership of any lot or lots in Spanish Ridge or Escalante Lots via rescission by a lot owner, Respondents shall not be required to obtain a public report prior to selling or conveying such lot or lots. Any such sale or conveyance, however,

shall be accompanied by such disclosures to purchasers and rescission rights as are required under A.R.S. § 11-806.03. Further, Respondents shall provide all purchasers of lots with a true copy of this Consent Order prior to entering any agreement to sell.

Respondents shall cooperate and perform such acts as are necessary to secure, protect and maintain the rights of present and future owners of lots in Escalante Lots and/or Spanish Ridge to a safe and adequate water supply. Such acts shall include but not be limited to conveying, seasonably and without charge, any ownership interests or other rights in any real property, improvements or fixtures comprising the existing water distribution systems located in Escalante Lots and Spanish Ridge. Such real property, improvements and fixtures shall include, but not be limited to, wells, wellsites, pumps or pumping stations, pipes or other related equipment. Prior to any conveyance of such real property, improvement or fixture, Respondents shall obtain written approval of the conveyance or conveyances from the Department's Compliance Officer.

#### 00A-102

**Arthur B. Carroll, Robert A. Kerry, Jared Madsen and George D. Carroll  
Tucson and Alabama**

DATE OF ORDER: April 27, 2001

FINDINGS OF FACT: Arthur B. Carroll (Art Carroll) resides in Alabama. Robert A. Kerry and Jared Madsen reside in Arizona. George D. Carroll is and was at all times material to this matter a licensed Arizona real estate salesperson employed by Gallagher and Associates, Inc., a licensed real estate broker. He is the son of Art Carroll. George Carroll has assisted other Respondents named herein in purchasing lands located in a 242 acre parcel in Cochise County. Art Carroll, Kerry and Madsen have offered to sell and have sold land within the parcel.

VIOLATIONS: The 242 acres constitutes a subdivision within the meaning of A.R.S. § 32-2101(54), as improved or unimproved land divided or proposed to be divided for the purpose of sale or lease into six or more lots, parcels or fractional interests; and further, as lands divided or proposed to be divided as part of a common promotional plan within the meaning of A.R.S. § 32-2101(14).

Respondents Kerry, Madsen and Art Carroll have each acted as subdividers within the meaning of A.R.S. § 32-2101(53) by causing land to be subdivided into a subdivision for themselves or for others, and by undertaking to develop a subdivision.

Respondents have acted in concert by collaborating to pursue a concerted plan within the meaning of A.R.S. § 32-2101(1) to create a subdivision of six or more lots, parcels or fractional interests for themselves or others for the purpose of sale within the meaning of A.R.S. § 32-2101(54), through using a series of owners or conveyances or other methods which ultimately resulted in the division of lands into a subdivision or the sale of subdivided land, in violation of A.R.S. § 32-2181(D).

Respondents offered to sell and sold lots

or parcels in a subdivision without first obtaining a public report, and failed to furnish each prospective purchaser with a copy of a valid public report, in violation of A.R.S. § 32-2183(F).

Respondents failed to notify the Commissioner in writing of their intention to offer for sale or sell the subdivision lots, in violation of A.R.S. § 32-2181(A).

Respondents sold subdivided lands without applying for or obtaining a subdivision plat from Cochise County in violation of A.R.S. § 11-801 *et seq.* and county subdivision regulations promulgated pursuant to those statutes.

Respondent George Carroll assisted a subdivider or subdividers in the offer or sale of a subdivision lot or parcel, or lots or parcels, in violation of the Subdivided Lands Act, A.R.S. § 32-2181, *et seq.*, under circumstances in which he knew or should have known of such violations, in violation of A.R.S. § 32-2164.

Respondent George Carroll disregarded or violated provisions of Arizona Revised Statutes, Title 32, Chapter 20 of the Arizona Revised Statutes and/or the Commissioner's Rules in violation of A.R.S. § 32-2153(A)(3).

DISPOSITION: The Order Summarily Prohibiting Sale, Lease or Transfer under case 00A-102-REL, dated December 11, 2000, is affirmed. Respondents shall be prohibited from selling or conveying lots, or any fractional interests thereof, located within the 242 acres, until they demonstrate compliance with Cochise County subdivision requirements as described below. Further, Respondents are subject to public report requirements under A.R.S. § 32-2181 *et seq.* for any further sales of lots or parcels in the 242 acres.

Respondents Kerry, Madsen, Art Carroll and George Carroll are each assessed a civil penalty in the amount of \$1,000. Respondents shall pay the Department's investigative expenses incurred, not to exceed \$500.

Respondents Kerry, Madsen and Art Carroll shall each offer rescission to each individual or entity who purchased a lot or lots from them. Purchasers shall have 30 days after receipt of the rescission offer to accept or reject the offer.

Respondents Kerry, Madsen and Art Carroll are, jointly and severally, financially responsible for bringing the 242 acres into compliance with Cochise County subdivision platting requirements including road engineering and construction, draining and flood control, and water and utility requirements, pursuant to the Cochise County Floodplain Regulations and Cochise County Road Construction Standards for Public Improvements, as are presently applicable to the 242 acres.

Respondents Kerry, Madsen and Art Carroll shall obtain and submit to the Department's Compliance Officer, within one year of the date of this Order, a written statement by the Cochise County Planning Director that they have complied with applicable floodplain regulations and road construction standards with respect to the 242 acres. Extensions of the one-year deadline may be granted upon good cause and the express written consent of the Cochise County Planning Director.

## ADRE, AAR agree on changes to Substantive Policy Statement

The Department and the Arizona Association of Realtors have agreed on a revision to Substantive Policy Statement No. 2 (See "News from the Commissioner" on page 3).

For your information, here are the old and new versions of the Statement:

### Current version:

#### Agency Responsibility to Verify Information

#### Description of Practice/Procedure:

An agent bears a responsibility to his client and is duty bound to do everything within reasonable limits to protect the interests of his client. In other words, the agent has a responsibility, within reasonable limits, to verify the accuracy of the information for his client and should not simply accept it at face value.

The Commissioner suggests three practical questions to ask in determining whether information should be verified:

1. Can the information be verified by the exercise of reasonable care or effort? If it can be, then it should be.
2. Would the correct information materially and adversely affect the consideration to be paid in the transaction? If so, it's the kind of information which needs to be checked.

3. If you were the client, would you want to know?

While these three questions are not a perfect means to gauge licensee responsibility in every situation, together they provide a reasonable rule of thumb. Certainly, every situation is different and must be carefully evaluated in light of the individual circumstances before the Department would pursue administrative sanctions against any licensee for failure to verify information in a transaction.

### Revised version:

#### Agency Responsibility.

#### Description of Practice/Procedure:

An agent has a fiduciary duty to his or her client to act in the client's best interests. This duty includes an obligation to exercise reasonable care in obtaining and communicating information that is material to the client's interests and relevant to the contemplated transaction. However, an agent does not have the obligation to have expertise in other professional or technical disciplines. Reasonable care or competence may include recommending that a client seek professional or technical advice when the matter is beyond the expertise of the agent.

An agent may be expected to take reasonable steps to assist a client in confirming or verifying information under circumstances in which a reasonably

prudent agent has reason to question the accuracy of the information, or where the client has questioned the accuracy of the information.

The Commissioner suggests that agents ask themselves the following question in determining how to meet their obligations in this regard: *If you were the client, would you reasonably expect the information to be brought to your attention?*

These considerations represent the Department's approach to enforcing agents' duties under the real estate statutes and Commissioner's Rules, including A.R.S. § 32-2153 and A.A.C. R4-28-1101, with respect to obtaining and communicating information and merely provide a reasonable "rule of thumb" for agents to follow in complying with their duties and obligations under those statutes and rules. This statement is not, however, intended to impose duties or obligations beyond those required under the real estate statutes, Commissioner's Rules, or the common law. In enforcing agents' duties to their clients and other parties, the Department may refer to common-law agency principles as recognized under Arizona case law and/or the Restatement:

Authority: Commissioner's Rule R4-28-1101(A) through (G) describe an agent's "professional duties" and A.R.S. § 32-2153(A)(3) and (22) identify violation of rules and negligence as grounds for disciplinary action against a license.

## Stigmas

*Continued from page 2*

crime occurring on the subject property. Thus, an argument can be made that a broker is still required to disclose the broker's knowledge of the existence of criminal activity involving the surrounding neighborhood, especially violent crimes. Unfortunately, this remains very much a grey area, and whether disclosure is required may depend on the type of crime, how recent it occurred, the type of neighborhood, and the type of persons purchasing the home.

### Environmental Stigmas

Arizona's stigmatized property law does not eliminate a broker's duty to disclose environmental stigmas or the possibility the property is contaminated. For example, if the home is known to have had a meth lab, although the crime does not have to be disclosed per the statute, the possibility of environmental contamination must be disclosed.

Obviously, if a broker knows of actual environmental contamination, this must be disclosed, even if the contamination was caused by a crime on the property. With respect to suspected

contamination, a broker is probably obligated to make such a disclosure if the stigma affects the market value of the property being sold. Furthermore, it has been the long-standing policy of the Real Estate Commissioner that the broker must disclose to a buyer that the subject property is located within a Superfund site, regardless of the effect on the market value.

*Dan Kloberdanz is a partner in the law firm of Stoops & Kloberdanz, PLC. He may be reached at 602-274-7700*

## Broker Clinic now available online

The Prescott Valley School of Real Estate is the first Arizona real estate school approved to present the Broker Management Clinic on the Internet.

The school's web site can be found at <http://www.pvsre.com/>.

Each new real estate broker li-

censee must attend a broker management clinic within 90 days of original licensure as a broker.

Each associate real estate broker licensee who changes status to designated real estate broker must attend a broker management clinic within 90 days of the status change, unless the broker has taken the course within the current license period.

Each designated (including self-employed) real estate broker must

attend a broker management clinic once every two year licensing period.

Legislation enacted this year, effective August 9, requires a licensee to attend a Broker Management Clinic before applying for a real estate broker's license, and before becoming a designated broker.

Twenty-one schools offering Broker Management Clinics in the classroom may be found on the Department's web site at [www.re.state.az.us](http://www.re.state.az.us).

# ARIZONA

## REAL ESTATE BULLETIN

Arizona Department of Real Estate  
2910 N 44th Street, Phoenix AZ 85018-7256

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## Sales in Mexico

*Continued from page 1*

contract prior to the issuance of the public report.

Keep in mind, however, that both programs are conditioned on the buyer receiving, reviewing, signing a receipt for and accepting the information listed in the public report when one is issued. Therefore, a buyer could rescind their purchase and receive a full refund of their earnest money for any reason and without cause anytime prior to their acceptance of the public report. In addition, all monies collected by the subdivider under these two programs must be deposited into a neutral escrow depository located in Arizona.

**Q.** How is the public protected by these

rules?

**A.** The public report is a wealth of information to the public covering such areas as the subdivider's ownership in the property, what type of interest is being offered, whether potable water, sewer, electric and telephone service is available. The public report also covers areas such as legal permanent access, hazards associated with any adjacent land or in the vicinity of the subdivision, the location of the nearest hospital, transportation and shopping, and if police and emergency services are available. The public report assists a prospective buyer in making an informed decision on whether to make a purchase.

If the subdivision is registered, the department can also review how a property is being represented through advertisements and confirm that the in-

formation provided by the subdivider is factual and not misleading to Arizona purchasers.

**Q.** Are there other types of property in Mexico being offered to Arizona residents?

**A.** Yes, timeshare/vacation club and campground property. The sale of these types of real estate offerings is regulated very similar to that of subdivided land, but under separate laws. A public report must be issued prior to making an offer to sell in Arizona. Further, the lot reservation and conditional sales programs mentioned earlier do not apply to these types of offerings.

For more information about selling property in Mexico, contact the Department's Subdivision Division at (602) 468-1414, extension 400.